

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Bob Angen, d/b/a Bob
Angen Construction Services

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above matter came on for Prehearing Conferences before Administrative Law Judge (ALJ) Richard C. Luis, on February 12 and May 4, 2004, at the Office of Administrative Hearings in Minneapolis.

Michael J. Tostengard, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared on behalf of the Minnesota Department of Commerce ("Department"). Bob Angen, dba Bob Angen Construction Services, ("Respondent") 6604 Parkwood Road, Edina, MN 55436, appeared on behalf of himself and Bob Angen Construction Services on February 12, 2004. He did not appear at the Prehearing Conference on May 4, 2004.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Dept. of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Whether disciplinary action should be taken against the residential business contractor license of Bob Angen, d/b/a Bob Angen Construction Services in accordance

with Minn. Stat. § § 45.027, subds. 6 & 7 and 326.91 for failure to supervise reasonably its employees and subcontractors, for being incompetent, untrustworthy or financially irresponsible, for failing to pay subcontractors and suppliers upon receipt of proceeds from a homeowner, and/or for providing false and misleading information to the Department?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 12, 2004, a Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges in this matter was issued, scheduling a Prehearing Conference on February 12, 2004.

2. Both parties appeared at the Prehearing Conference on February 12. The Department of Commerce was represented by Mr. Tostengard, and Bob Angen appeared on behalf of himself and Bob Angen Construction Services.

3. It was agreed at the Prehearing Conference that the parties were to be given time to attempt working on a settlement or a stipulation of major issues in the proceeding. Mr. Tostengard proposed to send Mr. Angen a written offer of settlement shortly after the conclusion of the Prehearing Conference.

4. By letter to the parties on March 18, 2004, the Administrative Law Judge affirmed his oral ruling of February 12 to the effect that an evidentiary hearing in this matter, if one was to be conducted (should the parties be unable to settle the case), would take place on Tuesday, May 4, 2004, commencing at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis. This letter was sent to Mr. Tostengard and Mr. Angen at the addresses noted above.

5. On February 13, 2004, when it appeared that the parties had settled this matter, counsel for the Department sent a Consent Order for Mr. Angen to review and sign, which action would resolve the case.

6. On March 23, 2004, counsel for the Department sent Mr. Angen a letter reminding him that he had sent a Consent Order for Mr. Angen's signature on February 13, but that Mr. Angen had not signed and returned the Consent Order. Counsel also informed Mr. Angen in the March 23 letter that if he did not receive the signed Consent Order and other matters noted in the letter relating to settlement of the case by April 6, 2004, he would contact the Office of Administrative Hearings and put the matter on for hearing.

7. On or about April 26, 2004, counsel for the Department contacted the Administrative Law Judge and informed him that the matter had been settled in principle, but that counsel had not received an executed Consent Order from Mr. Angen, "who has had ample time to execute and forward the Consent Order." This was memorialized in a letter to the Administrative Law Judge on April 26, 2004.

8. Mr. Tostengard's April 26, 2004, letter to the Administrative Law Judge requested that the matter be placed back on the calendar for a Prehearing Conference, utilizing the May 4, 2004 hearing date for that alternative purpose. Mr. Angen was sent a copy of this letter to his last known address (6604 Parkwood Road, Edina, MN 55436). Counsel's request was granted orally by the Administrative Law Judge on April 26, 2004.

9. The Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges in this matter reads, at page 5:

Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department of Commerce's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

The Notice mentioned no similar potential consequences if a Respondent fails to appear at a hearing because the Notice set no date certain for the hearing. That date (May 4, 2004) was set by the ALJ at the Prehearing Conference.

10. The Respondent did not appear at the second Prehearing Conference on May 4, 2004, nor did anyone appear on his behalf. The Respondent made no request for a continuance or for consent not to appear.

11. The allegations of the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges are deemed proved and are incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. § § 14.50, 45.027, subds. 6 & 7 and 326.91.

2. Any of the above Findings of Fact more properly termed Conclusions are adopted as such.

3. The Respondent was given timely and proper notice of the Second Prehearing Conference in this matter. The Department has complied with all relevant substantive and procedural requirements of law and rule.

4. Under Minn. Rule 1400.6000, the Respondent is in default as a result of its failure to appear at the scheduled Prehearing Conference on May 4, 2004.

5. Under Minn. Rule 1400.6000, the allegations and issues set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges may be taken as true or deemed proved when a party defaults.

6. Based upon the facts set out in the Notice of and Order for Hearing, order for Prehearing Conference and Statement of Charges, the Respondent has violated Minn. Stat. § 45.027, subd. 7(3) and 326.91, subd. S.1(4), 1(6) and 1(8).

7. Disciplinary action against the Respondent is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against the Residential Building Contractor's License of Bob Angen, dba Bob Angen Construction Services.

Dated this 28th day of May, 2004

S/ Richard D. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Default.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The ALJ did not notify Mr. Angen in writing of counsel's request to "convert" the hearing (of which the Respondent had specific written notice) to a prehearing status conference (when, if Mr. Angen appeared, he could attempt to explain why he had not signed and returned the Consent Order). In the opinion of the ALJ there is no difference legally, whether the proceeding convened on May 4 was a hearing or a prehearing conference. Under Minn. Rule 1400.6000, a default occurs when a party fails to appear without the prior consent of the ALJ at either type of proceeding. The record is clear that Mr. Angen had notice of a proceeding on May 4, that the penalty for failure to appear without prior consent was to be declared in default, and that he failed to appear without prior consent. Therefore, he is in default.

R.C.L.